

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA
***ex rel.*, Christian M. Heesch,**

Plaintiff,

vs.

DIAGNOSTIC PHYSICIANS GROUP, P.C.;
IMC-DIAGNOSTIC AND MEDICAL, P.C.;
IMC-NORTHSIDE CLINIC, P.C.;
INFIRMARY MEDICAL CLINICS, P.C.; &
INFIRMARY HEALTH SYSTEMS, INC.,

Defendants.

CIVIL ACTION NO. 11-0364-KD-B

ORDER

This action is before the Court on the motion to dismiss the United States' complaint in intervention filed by Defendants IMC Diagnostic and Medical Clinic, P.C., IMC-Northside Clinic, P.C., Infirmary Medical Clinics, P.C., and Infirmary Health System, Inc. (the Infirmary Defendants) and brief in support (docs. 59, 60), the United States' response (doc. 70), the Infirmary Defendants' reply (doc. 77), the Report and Recommendation entered by U. S. Magistrate Judge Sonja F. Bivins (doc. 180), the United States' objection (doc. 206) and the Infirmary Defendants' response to the objection (doc. 274).

After due and proper consideration of the issues raised and a de novo determination of those portions of the Recommendation to which objection is made, the United States' objections are overruled and the Recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) and dated April 11, 2014 (doc. 180) is **adopted** as the opinion of this Court.

Further, the United States requests leave to amend its complaint pursuant to Fed. R. Civ. P.

15(a)(2) to cure any defects should the Court overrule the objections (doc. 206, p. 2, 12-13). The United States asserts that fairness dictates that it should be given at least one chance to correct any pleading deficiencies. The request is **denied**. The United States has had almost three years to properly investigate and assert its claims. Moreover, discovery will close June 10, 2014, dispositive motions are due June 30, 2014, and the litigation is four months from a firm, specially set jury selection and trial in September 2014 (doc. 86, Rule 16(b) Scheduling Order).

Accordingly, the Infirmary Defendants' motion to dismiss is granted in part and denied in part, as follows:

1) The motion is **granted** as to all claims against Defendants Infirmary Medical Clinics, P.C. and Infirmary Health Systems, P.C. as contained in Counts One through Five; and

2) The motion is **granted** as to Count Three against Defendants IMC-Diagnostic and Medical Clinic, P.C. and IMC-Northside, P.C.; and

3) The motion is **denied** as to all remaining claims against IMC-Diagnostic and Medical Clinic, P.C. and IMC-Northside, P.C. as contained in Counts One, Two, Four and Five.

DONE and **ORDERED** this the 22nd day of May 2014.

s / Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE